

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

FEB 28 2008

COURT OF APPEALS  
DIVISION TWO

VERNON L. WALKER,	)	
	)	
Plaintiff/Appellant,	)	2 CA-CV 2007-0069
	)	DEPARTMENT B
v.	)	
	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
PIMA COUNTY, a political subdivision,	)	Rule 28, Rules of Civil
	)	Appellate Procedure
Defendant/Appellee.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20060856

Honorable John F. Kelly, Judge

APPEAL DISMISSED

Scott K. Risley, P.C.

By Scott K. Risley

Prescott  
Attorneys for Plaintiff/Appellant

Barbara LaWall, Pima County Attorney

By Scott D. McDonald

Tucson  
Attorneys for Defendant/Appellee

\_\_\_\_\_  
E S P I N O S A, Judge.

¶1 Appellant Vernon Walker appeals the superior court’s denial of his motion for relief from judgment pursuant to Rule 60(c), Ariz. R. Civ. P., and his simultaneously filed motion for reconsideration. For the following reasons, we dismiss the appeal.

¶2 On November 15, 2005, the Pima County Board of Supervisors upheld an Enforcement Hearing Officer’s decision finding Walker in violation of various building code requirements. On December 14, 2005, Walker was notified of the Board’s decision by certified mail. On February 10, 2006, Walker filed a complaint in Pima County Superior Court requesting judicial review of that decision.

¶3 On May 4, 2006, the County filed a motion to dismiss Walker’s complaint, asserting he had missed the statutory deadline for filing it and that the superior court therefore lacked jurisdiction to review the Board of Supervisors’ decision. The court agreed, granted the motion, and signed an order dismissing the case on June 1. Walker did not appeal the dismissal. Almost seven months later, in January 2007, Walker filed a motion for reconsideration and a motion for relief from judgment pursuant to Rule 60(c), Ariz. R. Civ. P. The court denied these motions, and this appeal followed.

¶4 At the outset, any review in this case is solely pursuant to the Judicial Review of Administrative Decisions Act (JDARA), A.R.S. §§ 12-901 through 12-914. “It has long been held that the right to appeal from any ruling including an administrative decision exists only by force of statute and is limited by the terms of the statute.” *Guminski v. Ariz. State Veterinary Med. Examining Bd.*, 201 Ariz. 180, ¶ 8, 33 P.3d 514, 516 (App. 2001); *see also Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, ¶ 25, 132 P.3d 1187, 1193

(2006); *Stapert v. Ariz. Bd. of Psychologist Exam'rs*, 210 Ariz. 177, ¶ 8, 108 P.3d 956, 958 (App. 2005). Walker failed to appeal the superior court's order dismissing the complaint for judicial review after that court determined it lacked jurisdiction over the complaint. *See* A.R.S. § 12-913 (authorizing appeal from "final decision, order, judgment or decree of the superior court"). The order establishing the absence of jurisdiction was a final, appealable order and he has not challenged it. *See Int'l Bhd. of Elec. Workers, Local Union 640 v. Kayetan*, 119 Ariz. 508, 509, 581 P.2d 1158, 1159 (App. 1978).

¶5 When Walker later filed a Rule 60(c) motion in the case, the superior court still had no jurisdiction. "[A] Judge who concludes that subject matter jurisdiction is lacking has no power to rule alternatively on the merits of a case." *Washburn v. Pima County*, 206 Ariz. 571, ¶ 7, 81 P.3d 1030, 1034 (App. 2003), *quoting Wages v. Internal Revenue Serv.*, 915 F.2d 1230, 1234 (9th Cir. 1990); *see also State ex rel. Neely v. Rodriguez*, 165 Ariz. 74, 77, 796 P.2d 876, 879 (1990) (when appeal jurisdictionally time-barred, appellate tribunal cannot exercise discretionary jurisdiction and grant relief). Thus, instead of addressing the merits of Walker's motion, the superior court could only find it continued to lack jurisdiction over the case. *See Smith*, 212 Ariz. 407, ¶ 33, 132 P.3d at 1194 (jurisdiction to hear an untimely administrative appeal cannot be conferred on superior court); *Kerr v. Waddell*, 185 Ariz. 457, 464, 916 P.2d 1173, 1180 (App. 1996) (failure to comply with the statutory requirements deprived tax court of jurisdiction and error not to dismiss action); *cf. Marquez v. Rapid Harvest Co.*, 99 Ariz. 363, 365, 409 P.2d 285, 287 (1965) (before addressing merits of case, trial court should determine if it has jurisdiction). Moreover, even assuming *arguendo* that

a Rule 60(c) motion were an appropriate vehicle to challenge a trial court's unappealed determination that it lacks subject matter jurisdiction, Walker made no such argument below.

¶6 “This court has the duty to review its jurisdiction and, if jurisdiction is lacking, to dismiss the appeal.” *Harris v. Cochise Health Sys.*, 215 Ariz. 344, ¶ 7, 160 P.3d 223, 226 (App. 2007), *quoting Davis v. Cessna Aircraft Corp.*, 168 Ariz. 301, 304, 812 P.2d 1119, 1122 (App. 1991). “Because appellate jurisdiction is derivative, when jurisdiction is lacking in the trial court, it is lacking on appeal.” *Webb v. Charles*, 125 Ariz. 558, 560, 611 P.2d 562, 565 (App. 1980); *see also Rojas v. Kimble*, 89 Ariz. 276, 279, 361 P.2d 403, 405-06 (1961) (jurisdictional limitations of trial court also apply to appellate court); *In re Alfaro's Estate*, 18 Ariz. App. 173, 174, 500 P.2d 1161, 1162 (1972) (same); *Riley v. Cochise County*, 10 Ariz. App. 55, 57, 455 P.2d 1005, 1007 (1969) (same). Here, the superior court lacked jurisdiction to entertain Walker's motion. For that reason, this court lacks jurisdiction to review the order denying it. *See State ex. rel. Corbin v. Tolleson*, 152 Ariz. 376, 379, 732 P.2d 1114, 1117 (App. 1986).

¶7 “There is no constitutional right to more than one opportunity to be effectively heard.” *Seafirst Corp. v. Ariz. Dep't of Revenue*, 172 Ariz. 54, 57, 833 P.2d 725, 728 (Ariz. Tax 1992) (holding denial of review based on taxpayer's failure to comply with statutory requirements for obtaining review not a violation of due process). By failing to appeal the superior court's order dismissing his complaint for lack of jurisdiction, Walker deprived the

superior court of jurisdiction over his subsequent motion and thus, deprived this court of jurisdiction to review the superior court's denial of that motion.<sup>1</sup>

¶8 Because this court lacks jurisdiction over Walker's appeal, we dismiss it.

---

PHILIP G. ESPINOSA, Judge

CONCURRING:

---

PETER J. ECKERSTROM, Presiding Judge

---

GARYE L. VÁSQUEZ, Judge

---

<sup>1</sup>Even if we could properly exercise jurisdiction of this appeal, the record clearly reflects that Walker's complaint for judicial review of the Board's decision was filed beyond the time limit provided in A.R.S. § 12-904(A). Because "[i]t is well settled that the time for filing an appeal, whether by appeal or by complaint for judicial review following the conclusion of the administrative process, is jurisdictional," *Smith*, 212 Ariz. 407, ¶ 25, 132 P.3d at 1193, the superior court was deprived of jurisdiction to review the Board's decision. *See also Stapert*, 210 Ariz. 177, ¶ 8, 108 P.3d at 958 (Section 12-902(B), A.R.S., explicitly bars review of any administrative decision when not timely sought); *Guminski*, 201 Ariz. 180, ¶ 8, 33 P.3d at 516 (same).